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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,528	02/01/2001	Nicholas Donofrio JR.	248946.0005 (DONO-101.2)	2682

21832 7590 01/29/2003
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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/775,528

Applicant(s)

DONOFRIO, NICHOLAS

Examiner

Naschica S Morrison

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2002 and 18 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-32 and 35-38 is/are pending in the application.
- 4a) Of the above claim(s) 2, 5-10, 18 and 21-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 13-17, 19, 20 and 35-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the third Office Action for serial number 09/775,528, Display Device for Sports Memorabilia, filed on February 1, 2001. Claims 1-10, 13-32, and 35-38 are pending. Claims 2, 5-10, 18, and 21-32 were withdrawn from further consideration as being drawn to a nonelected species in Paper No. 8.

Specification

The disclosure is objected to because of the following informalities: on page 1, line 18, "preferably" should be --preferable--. Appropriate correction is required.

Double Patenting

Applicant is advised that should claims 14-16 be found allowable, claims 36-38 will be objected to under 37 CFR 1.75 as being a *substantial duplicate* thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 4, 14, 17, 19, 20, and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Des. 365,948 to Borden in view of U.S. Patent

Art Unit: 3632

2,727,325 to Jurinic. Regarding claims 1, 3, 4, 14, 17, 19, 20 and 36, Borden discloses a display device (see attached marked copy of Fig. 3) comprising a base (1), first and second arms (2) extending from the base, first and second retainers (3) attached respectively to the first and second arms, and sports memorabilia (4) supported between the first and second retainers (3). Borden does not teach one of the arms or one of the retainers being flexible. Jurinic discloses a display device comprising: a base (16); a rigid arm assembly (12) extending from the base and including first (18) and second (20) arms having spaced apart distal ends; and first and second flexible cups (32,34) attached to the first and second arms such that the cups face each other, wherein the flexible cups can be pressed against the arms to receive memorabilia therebetween and then released to hold the memorabilia. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the display device of Jurinic for the display device of Borden because one would have been motivated to permit rotation of the article to various positions while viewing as taught by Jurinic (col. 1, lines 19-21).

Claims 13, 15, 35, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borden in view of Jurinic and further in view of U.S. Patent 5,560,579 to Woodside. With regards to claims 13, 15, 35, and 37, Borden in view of Jurinic discloses the display device as applied above, but does not disclose the base adapted to be hung on a wall. Woodside discloses a display device (Fig. 2) having a base (18) including apertures (29) for mounting to a wall. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the base

(16) by including apertures because one would have been motivated to permit the device to be mounted on vertical surfaces as well as horizontal surfaces as taught by Woodside (col. 3, lines 58-61).

Claims 16 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borden in view of Jurinic and further in view of U.S. Patent 339,072 to Nies. With regards to claims 16 and 38, Borden in view of Jurinic does not disclose the arm assembly having a third arm. Nies discloses a clamp device (figure 1 generally) having a third arm (M) located between the first and second arms. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the arm assembly by including a third arm between the first and second arms (generally located at 14) because one would have been motivated to provide an additional arm to increase the attaching engagement of the arm assembly with the structure being clamped and further since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Response to Arguments

Applicant's arguments filed 8/19/02 and 10/8/02 with respect to claims 1, 3, 4, 13-17, 19, 20, and 35-38 have been considered but are moot in view of the new grounds of rejection.

In response to applicant's argument that Jurinic is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was

concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Jurinic is pertinent to applicant's problem in that it teaches a device for adjustably and releasably suspending objects to be viewed by a user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 1124896 to Hartman; 2551354 to Wasilevich;

D258125 to Bailey; 5379892 to Reams et al; D355792 to White;

6170185 to Donofrio, Jr.; 6364127 to Richardson

The above references disclose display devices/supports relevant to Applicant's invention.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


Art Unit: 3632

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9326 (formal amendments) or (703) 872-9327 (After Final amendments).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
1/21/03


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER